Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))	**CC Docket No. 96-128**

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to the Public Notice released August 5, 1997 (the "Remand Notice")[1/], hereby responds to the comments filed with reference to the Court-ordered remand of the above-captioned proceeding[2/]. In reply, the following is respectfully shown:

I. Preliminary Statement

1. Comments were filed by a broad cross-section of parties affected by the Commission's payphone policies including local exchange companies[3/],

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1/ DA 97-1673 entitled "Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding".

2/ See Report and Order, 11 FCC Rcd 20545 (1996) (the "Payphone Order"), recon. granted in part, 11 FCC Rcd 21233 (1996) (the "Order on Reconsideration"); vacated in part and remanded, Illinois Public Telecommunications Ass'n v. FCC, D.C. Circuit Nos. 96-1394 et al. (July 1, 1997) (the "Remand Order").

3/ See, e.g., Comments of Frontier Corporation, Peoples Telephone Company, Inc., and the RBOC/GTE/SNET Payphone Coalition.

interexchange carriers[4], wireless carriers[5], payphone service providers[6], and a broad cross-section of trade groups and industry associations.[7] The positions taken by the various commenters are not particularly surprising. Recipients of payments under the current regime defend the interim payment scheme, decry retroactive adjustments and argue that the $.35 rate should be retained or increased.The payers of the payphone compensation argue, on the other hand, that the interim payment scheme must be abandoned, that prior payments must be rebated or credited against future obligations, and that the $.35 interim rate is too high.

2. The diametrically opposed comments provide no evidence that a middle ground is emerging or that the parties are moving towards a consensual resolution of the divisive issues presented in the proceeding. AirTouch submits that impasses of this nature present a particularly apt occasion for the Commission to explore fresh, creative approaches that offer a fair resolution for all concerned. AirTouch's Reply Comments are therefore devoted to exploring such alternatives, taking into consideration the information contained in the record of this proceeding.

4/ See, e.g., Comments of AT&T Corporation, LCI International Telecommunications, Inc., MCI Telecommunications Corp., Sprint Corporation and Worldcom, Inc.

5/ See, e.g., Comments of AirTouch Paging, PageMart Wireless, Inc., and Paging Network, Inc.

6/ See, e.g., Comments of Communications Central, Inc., Midcom Communications, Inc., Peoples Telephone Company, Inc., Telaleasing Enterprises, Inc. and Teleport Communications Group, Inc.

7/ See, e.g., Comments of American Public Communications Council, America's Carriers Telecommunications Association, Competition Policy Institute, Competitive Telecommunications Association, International Telecard Association, NATSO, Inc., The Personal Communications Industry Association, The Telecommunications Resellers Association, and the United States Telephone Association.

II. The Record Raises Serious Questions Concerning the Fairness of the Current Payment Scheme

3. The comments call into serious question the fairness of the interim plan which assessed the interim compensation obligation only against the largest IXCs. AT&T, the Competitive Telecommunications Association ("ComTel"), Excel Telecommunications, Inc. and Telco Communications Group, Inc. ("Excel/Telco"), General Communications, Inc. ("General"), International Telecard, Inc. ("ITI"), LCI International, Inc. ("LCI"), and Midcom Communications, Inc. ("Midcom") all recommend that the per-call compensation obligation be assessed against all carriers who carry compensable calls, including LECs.[8]

4. The repeatedly expressed concerns regarding who should pay the PSPs actually reflect a fundamental problem with the Commission's payphone compensation scheme. None of the carriers who transport a compensable call are the true beneficiary of the payphone usage. Rather, the calling party who elects to use a payphone is the primary beneficiary of the ability to complete a toll-free call over that phone. Rather than seeking to address the fairness issue by expanding the universe of telecommunications carriers obligated to pay payphone service providers, the Commission would be better served by implementing a caller pays system as has been advocated by AirTouch Paging and others.[9]

8/ See Comments of AT&T at p. 28; ComTel at 14, Excel/Telco at 4, General at 2, ITI at 9, LCI at 9, and Midcom at 8.

9/ The comments of Paging Network, Inc. (Section III) and PCIA (Section II) support the adoption of a calling party pays system.

III. The Record Establishes Serious Limitations on the Implementation Of A Call Tracking/Blocking System

5. AirTouch expressed concern in its original comments that effective, targeted call-blocking options do not exist.[10] This fact seriously undermines the Commission's payphone compensation decisions and the Court's Remand Order, all of which considered the ability to block calls to be a necessary competitive check on the imposition of excessive charges for 800 calls by payphone service providers.

6. The comments in this remand proceeding resoundingly confirm AirTouch's concern. AT&T estimates in its comments that "it would cost hundreds of millions of dollars up front to do the systems development work that is necessary to track multiple compensation rates that change during the tracking period at millions of phones and to offer customers the ability to block subscriber 800 calls from 'high-priced' payphones at their request."[11] The comments of the RBOC/GTE/SNET Payphone Coalition concur that it would be "tremendously expensive" for each PSP payphone to be identified by the LEC switch with an ANI ii digit identifier establishing it as a pay telephone subject to per-call compensation.[12] Notably, this coalition estimates that establishing the requisite call tracking and call blocking system would add in a range of \$.05 - \$.08 to the cost of each compensable call. Thus, the

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10/ AirTouch Comments, pp. 8-10.

11/ AT&T Comments, pp. 16-17.

12/ RBOC/GTE/SNET Comments, p. 17.

immediate result of the statute intended to introduce competition into the payphone market would be an increase in payphone rates.[13/]

7. The comments of the United States Telephone Association ("USTA") contain as an attachment an extended ex parte communication which provides extensive background information on ANI operation. The USTA estimates indicate that, even if flex ANI rather than more expensive hard-coding were used, it would cost approximately $770 million to modify LEC switches to provide the call tracking and call blocking capability that the Commission has ordered.[14/]

8. The comments of Paging Network, Inc. properly point out that parties that are in the best position to create an effective call tracking and call blocking mechanism (the IXCs, LECs) have no competitive incentive to do so. Under the Commission's scheme, the carrier who carries a compensable call is able to pass charges paid to the PSP through to the called party. Thus, the compensating carrier has no incentive to expend funds to track or block the call.

9. The inescapable conclusion is that the Commission should adopt an alternative which does not rely upon call tracking or call blocking in order to place competitive checks on the imposition of excessive charges by payphone service providers. As this has been advocated by AirTouch, Paging Network, Inc., and PCIA, a calling party pays system is the only true surrogate for a market-based approach to payphone compensation.

13/ Indeed, effective per PSP call blocking is an essential underpinnings of the payphone compensation scheme promulgated by the Commission. If 800 subscribers are required to pay a significant per call charge for blocking technology, this turns the compensation scheme on its head by imposing a charge for a blocked call.

14/ USTA Comments, Attachment 1, p. 7.

IV. The Commission Should Explore Other Customer-Friendly Solutions Such as Unique 8XX Codes

10. In reviewing the Commission's original Payphone Order and Order on Reconsideration, the major reason for rejecting a caller pays system for compensation of PSPs for subscriber 800 calls was Commission perception that 800 access calls should be capable of being placed without having the calling party place a "coin in the box".[15] Although AirTouch believes that a solution can be implemented using a caller-pays, coin in the box approach, another possible solution would be to establish a unique 8XX code (e.g. 877) to be established[16] which would be toll-free in terms of long distance charges, but could be accessed from a payphone only if the person initiating the call deposits coins (presumably a fraction of the local call rate)[17]. Long distance carriers would not establish toll-free access codes within this 8XX code if they did not want their customers to have to put coins in the payphone in order to reach their access number. As such, the intermixture of subscriber 800 and 800 access calls which created problems under the Telephone Consumer Services Improvement Act ("TOSCIA") will be eliminated.

15/ See Order on Reconsideration, para 88.

16/ If it turns out that less than an entire code is required to satisfy the demand for this billing option, the Commission could order that a smaller range of numbers within the unique 8XX be reserved for this purpose (e.g. 877-5XX-XXXX).

17/ The AT&T Comments in this proceeding demonstrate that, if the Commission were to adopt a compensation scheme based on the price for local coin calls less than offset, the offset should be at least 50%, because the cost differences between coin calls and coinless calls and related factors mandate such a differential. See AT&T Comments, Part III.

11. The great benefit of this scheme is that it resolves the payphone compensation problems by creating consumer choices. A customer who receives toll-free calls could choose an 800 or 888 number and pay any applicable per call payphone surcharges that were passed through. If call blocking is available[18/], the Commission could choose a standard 800 or 888 number and avoid payphone surcharges by blocking calls selectively, or across the board. Or, the customer could choose a number within the unique 8XX code which would allow them to receive calls without a payphone surcharge provided that the caller put the applicable payphone service 800-call compensation rate in the coin box. This solution would satisfy the requirements of the 1996 Telecommunications Act regarding compensation to payphone service providers, while avoiding many of the complications which are created by the current payment scheme.[19/] AirTouch believes that this solution could be implemented by the PSP at a substantially lower cost than the current payment solution.[20/]

18/ See discussion, infra at Section III.

19/ AirTouch understands, based upon consultations with its resident numbering experts, that INC has acted to set aside ANI 27 to identify all central-office controlled payphones and ANI 70 to identify all non-central office controlled payphones. Assuming that all payphones -- and only payphones -- are identified with one of these ANIs then the ability to block all subscriber 800 calls from payphones that would result in a surcharge will have been achieved. The key, from AirTouch's viewpoint, is for the payphone user to be signalled if a coinless 800 subscriber call is blocked and given the opportunity to deposit coins to complete the call. At this point, the intermixture of 800 access and subscriber 800 calls on a common 8XX code will no longer present a problem, and a mechanism will exist to require calls in the former category to remain coinless while calls in the latter category could require coin deposit to be completed.

20/ Although not a perfect solution, this represents a new approach that better serves the competing public interest objectives than the current scheme and would satisfy all parties' realistic needs.

V. **Paging Companies Should Pay a Lower Per-Call Amount <u>Due to The Short Duration of Paging Messages</u>**

12. Many of the commenters argue that compensation to payphone service providers for 800 calls should be cost-based, and that a cost based rate will be significantly less than the $.35 rate established on an interim basis by the Commission. The AT&T comments contain a cost study demonstrating that $.11 more truly reflects the appropriate per call charge[21/]. Based on its experience, Frontier Corporation recommends a $.10 per call interim rate.[22/] International Telecard supports a $.15 per call rate as a maximum.[23/] MCI submits that a cost based rate would have to less than $.17.[24/] Sprint supports a $.057 per call rate.[25/]

13. AirTouch will defer to the Commission's expertise to determining which of these numbers reflects the appropriate cost-based rate. It is clear, nevertheless, that the rate should be dramatically <u>below</u> local coin call rate. Collecting and accounting for coins from a payphone is labor intensive and, therefore, expensive. AirTouch finds unpersuasive the arguments of APC, the RBOC/GTE/SNET Coalition and others that the payphone compensation rate should <u>exceed</u> the local coin call rate.

<u>21/</u> AT&T comments at p. 6.

<u>22/</u> Frontier comments at p. 2.

<u>23/</u> International Telecard comments at p.5.

<u>24/</u> MCI comments at p. 11.

<u>25/</u> Sprint Comments at p. 11.

14. Whatever rate the Commission decides upon, the fact remains that a paging carrier should pay a lesser amount because of the short duration of calls used to initiate pages. Information contained in the RBOC/GTE/SNET comments indicates that typical call duration from payphones range from 3.22 minutes to 3.42 minutes[26/]. In stark contrast, paging industry data indicates that the average length of a call to initiate a page is 20 seconds. Given the dramatically shorter duration of calls to pagers, a PSP compensation scheme that imposes charges on a "per call" rather than on a "per second" basis will result in paging subscribers paying more than their fair share of passed through charges.

15. At present, paging companies generally pay their usage-sensitive toll charges in 1/10 of a minute (i.e. six second) increments. AirTouch requests that any "carrier pays" compensation scheme be implemented not on a fixed per call basis, but rather on a usage sensitive basis using the six second increments that has become common in other billing contexts.

Respectfully submitted,

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26/ RBOC/GTE/SNET Comments, Attachment 1, p. 10.

CERTIFICATE OF SERVICE

I, Diane Mimiaga, a secretary in the law offices of Paul, Hastings, Janofsky & Walker LLP, do hereby certify that on this 9th day of September, 1997, I caused copies of the foregoing Reply Comments of AirTouch Paging to be sent by first-class mail, postage pre-paid, or by hand-delivery* to the following:

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